

ETHICS ADVISORY -- Protection of Nonpublic Information

There are a number of laws and regulations that protect nonpublic information, such as:

The procurement integrity law restricts the release of source selection and contractor bid and proposal information, and provides civil fines and criminal penalties for improper release.

The trade secrets act makes it a crime to improperly release contractor trade secrets and other confidential business information outside the Government.

The *Standards of Ethical Conduct for Employees of the Executive Branch* prohibits us from releasing, exploiting, or allowing others to exploit nonpublic information.

In addition, restrictions on our use of information can arise in other ways:

We often buy technical data and computer software with restrictions on our release outside the Government.

An improper release of information outside the Government could result in a contracting officer determining that a potential source is barred from competing for a requirement because the release of information.

An improper release of information outside the Government could result in having to re-do or fix a procurement as a result of a successful protest.

The important thing to keep in mind with respect to our use of information, is that, when we discuss it with, or give it to, a contractor employee, we have released it ***outside*** the Government. If we invite a contractor employee to a meeting, whatever we discuss during the meeting has been released ***outside*** the Government. When we give a contractor employee information to enter into a database or to prepare slides and charts, we have released the information ***outside*** the Government. None of the laws and regulations that restrict ***our*** use of sensitive and nonpublic apply to the contractor employees, except for the procurement integrity law and privacy act.

This does not mean that we can never release information to contractor employees. But, it does mean that we really need to be sensitive to the issues and make conscious decisions. First: can we? For example, if it is technical data to which we have only restricted rights, we probably cannot release the information without first obtaining permission from the source of the data. Second, even if it is legal, do we really need to/should we release the information?

Once we decide that it is permissible to release the nonpublic information and that we need or want to provide it to a contractor employee, we should not do so without

some sort of promise by the contractor and its employee that they will not use or exploit the information in any way other than in furtherance of the contract. The contract might already provide for such a promise. If not, you should consider having the contractor employee sign a non-disclosure certification. Even if the contract has a specific promise by the contractor not to disclose nonpublic information that it has access to during the performance of the contract, you still might want to use a non-disclosure certification with the contractor employees who are supporting your organization or effort.

A sample non-disclosure agreement is attached for your information. It should not be used without first consulting with the contracting officer.

Questions in this area should be directed to the contracting officer, the contract lawyer, or the ethics official (me), as appropriate.

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